Department of Public Health and Human Services MEDICAL ASSISTANCE	Section: RESOURCES Subject: Penalty Periods for Asset Transfers

Supersedes: MA 404-2 (07/01/06)

References: OBRA '93; 20 CFR 416.1246; ARM 37.82.101, .417; 42 U.S.C. 1396p(c)(1)(E); Deficit Reduction Act of 2005

GENERAL RULE--When a Home and Community Based Services/waiver or institutionalized Medicaid applicant or recipient or his/her community spouse transfers assets for less than fair market value, a penalty period may be imposed. The penalty period is the period of time during which payment for waiver and institutionalized services are denied.

When an uncompensated transfer has occurred prior to the month of nursing home entry, transferred assets are not considered in a resource assessment because the nursing home resident or community spouse no longer owns them. However, when Medicaid eligibility is requested, the uncompensated transfer penalty may be applied to the case as an issue that is separate from the resource assessment issue.

NOTE: A client who has a penalty period imposed against him/her is not eligible for nursing home or waiver services. However, he or she may be eligible for other services to which the penalty would not apply.

CALCULATING PENALTY PERIOD

To determine the penalty period, divide the uncompensated value of asset(s) transferred by the average cost of nursing home care at the time of application for Medicaid or date of transfer, whichever comes later.

AVERAGE COST OF NURSING HOME CARE	
01/01/07-present	1/1/06-12/31/06
► $4512	$4292

When a penalty period includes a fraction of a month, nursing home or waiver services eligibility cannot begin until that fraction of the month has passed.

► Example: Client transferred $100,000. The penalty period is 22.2 months (22 months, 6 days): $100,000 ÷ $4512 = 22.2 months; 22.2 months is 22 months, 6 days (30 days/month X .2 = 6 days).

No matter when a penalty period begins, it runs continuously from the first date of the penalty period, regardless of whether the individual remains in or leaves the nursing home or waiver program. The penalty continues until the end of the calculated period. (See "Spousal Transfer Results In A Penalty" caption for policy on a transfer by one member of a couple.)

PENALTY START DATE FOR TRANSFERS ON OR AFTER 2/8/06

The date a penalty period begins depends on when the transfer occurred. No penalty can be imposed for assets transferred before the look-back period.

Uncompensated asset transfers that occurred on or after 2/8/2006 will begin on the date in which a person:

1. has applied for Medicaid, and
2. is found otherwise eligible for Medicaid (i.e., meets all other financial and non-financial criteria, including the resource limit), and
3. is institutionalized or would be awarded a Medicaid waiver slot currently available.

The penalty period for transfers made on or after 2/8/2006 will begin to accrue only when all of the above criteria are met.

► Example: A person transferred $20,000 to her sister on 2/28/07. On 3/5/07, she applies for Medicaid. She is found to be eligible for Medicaid while living in the community. However, on 6/21/07, she is admitted to a nursing home. The OPA evaluates her eligibility for nursing home coverage under Medicaid, and determines that the $20,000 transfer in February will affect her coverage. Since she entered an institution on 6/21/07, her transfer penalty period will begin on 6/21/07 and continue for 4.4 months ($20,000 ÷ $4512 = 4.4, or four months and 12 days). This person's penalty period will run from 6/21/07 through 11/2/07. Medicaid nursing home coverage can begin 11/3/07.

If retroactive coverage is requested, a penalty period for a transfer made on or after 2/8/06 may begin in the retroactive month if all of the criteria 1-3 above are met.

PENALTY START DATE FOR TRANSFERS BEFORE 2/8/06

Uncompensated asset transfers that occurred on or before 2/7/2006 will begin on the first day of the month in which the asset transfer occurred.

Example 1: Client transferred $100,000 on 9/1/05 and applied for Medicaid on 2/21/06. His penalty period is 23.3 months ($100,000 ÷ $4292) or 9/1/05 through 8/9/07.

Example 2: Client transferred $100,000 on 9/1/02 and applied for Medicaid on 10/1/05, for coverage beginning the month of October 2005. Because the look-back period is 36 months (i.e., no earlier than 10/1/02 for October 2005 benefits), the asset transfer on 9/1/02 does not affect eligibility for 10/1/05 Medicaid.

MULTIPLE TRANSFERS

When assets have been transferred in amounts and/or frequencies that make the calculated penalty periods overlap, add the value of all transferred assets and divide by the cost of nursing facility care. This will produce a single penalty period.

When multiple transfers are made in such a way that the penalty periods do not overlap, treat each transfer as a separate event with its own penalty period.

SPOUSAL TRANSFER RESULTS IN PENALTY

When either member of a couple transfers assets (e.g., the family home) which results in a penalty for the client, in certain instances, that penalty period must be apportioned between the spouses. The penalty period is apportioned when:

1. a penalty could be assessed against the community spouse (e.g., the community spouse applies for nursing home or HCBS/waiver coverage); and

   NOTE: For a transfer made on or after 2/8/06, the penalty can only be apportioned between the spouses if the community spouse is also institutionalized, applies for Medicaid, and is found to be otherwise eligible for Medicaid (i.e., meets all other financial and non-financial criteria).

2. some portion of the penalty against the client remains at the time the above conditions are met.

When these conditions are met, the existing penalty period must be apportioned between the spouses. However, the total penalty imposed on both spouses cannot exceed the length of penalty originally imposed on the client.

Example: Mr. Shalala enters a nursing home and applies for Medicaid. Mrs. Shalala transferred an asset on February 9, 2006 that results in a 36 month penalty against Mr. Shalala. Twelve months into the penalty period, Mrs. Shalala enters a nursing facility. Mr. Shalala's penalty period still has 24 months to run. The penalty period will be apportioned so each spouse has a 12-month penalty period ONLY if Mrs. Shalala also applies for Medicaid and is found to be otherwise eligible for Medicaid coverage of her nursing home care.

When one spouse is no longer subject to a penalty (e.g., spouse leaves the nursing home or dies) the remaining penalty period applicable to both spouses must be served by the spouse remaining in the nursing home or who continues to receive HCBS/waiver services.

TRANSFERRED ASSETS ARE RETURNED

When transferred assets or the financial equivalent are returned to the applicant/recipient, the related transfer penalty is eliminated.

The effect on the individual's eligibility depends on his/her application status.

When transferred assets are returned prior to denial of the Medicaid application or closure of benefits, any penalty related to the transfer of the returned assets is eliminated. Medicaid eligibility is recalculated based on the assumption that the transferred asset was available to the applicant during the entire application period.

When an application has been denied or benefits closed due to application of an asset transfer penalty, and transferred assets are subsequently returned, a new application for Medicaid must be submitted and the application can be processed for up to three months prior to the date of the new application. The returned assets must be counted in the resource determination when calculating eligibility for the retroactive period, and penalty periods adjusted to disregard the transfer of the returned assets.

nc

o O o